

EXHIBIT A

Honorable Richard A. Jones
Honoarable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff

vs.

BARRY THOM, et al.,

Defendant-Intervenor

and

ALASKA TROLLERS ASSOCIATION,

Defendant-Intervenor

CASE NO: 2:20-cv-00417-RAJ-MLP

**STATE OF ALASKA'S PROPOSED
ANSWER**

COMES NOW, the State of Alaska ("State") for its Answer to the Wild Fish
Conservancy's ("WFC") Complaint states as follows:

1. Admit.

2. The State admits that Tahlequah (J35), a female SRKW, carried her dead
calf for 17 days. WFC incorrectly identifies the sex of the calf, it was female. The State

1 further admits that Scarlet (J50) disappeared in September 2018 but is without sufficient
2 information to admit or deny the rest of the allegations in the paragraph and therefore
3 must deny the same.
4

5 3. The State admits that two calves were born in 2019 and survived, but the
6 State is without sufficient information to admit or deny the rest of the allegations in the
7 paragraph and therefore must deny the same.
8

9 4. Deny. Prey availability, pollution, vessel traffic, and noise are all factors in
10 the decline of the SRKW population. Further, modeling suggests that the modern
11 carrying capacity in Puget Sound is roughly 90 whales, which suggests that the decline
12 since the mid-90s is not due primarily to prey-related, density-dependent factors.
13

14 5. The State admits that NMFS has the authority to regulate fisheries within
15 the EEZ. The text of the PST speaks for itself and the State denies the allegations insofar
16 as they conflict with the plain language of the PST.
17

18 6. The State admits that NMFS issued a BiOp on April 5, 2019, entitled
19 “Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-
20 Stevens Fishery Conservation and Management Act Essential Fish Habitat Response,
21 Consultation on the Delegation of Management Authority for Specified Salmon Fisheries
22 to the State of Alaska.” The reasons for issuing the BiOp are contained in the document.
23

24 7. The State admits that Puget Sound Chinook salmon, Lower Columbia River
25 Chinook salmon, Upper Willamette River Chinook salmon, and Snake River fall-run
26 Chinook salmon are evolutionary significant units that are listed as threatened under the
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1 ESA. The rest of the allegations in the first sentence are too vague to give rise to a proper
2 response. The State denies the second sentence of Paragraph 7.

3
4 8. The first sentence is vague and no response is required. The State denies the
5 second and third sentences of Paragraph 8. The BiOp speaks for itself and no response is
6 required to its quoted or characterized portions within Paragraph 8.

7 9. Deny.

8
9 10. The BiOp speaks for itself and no response is required to the characterized
10 portions within Paragraph 10.

11 11. Deny.

12 12. Deny.

13
14 13. The allegations in Paragraph 13 describe the Complaint and the relief
15 requested and no response is required. The State denies each allegation.

16 14. The State is without sufficient information to admit or deny the allegations
17 in Paragraph 14, and therefore must deny the same.

18
19 15. The State is without sufficient information to admit or deny the allegations
20 in Paragraph 15, and therefore must deny the same.

21 16. The State is without sufficient information to admit or deny the allegations
22 in Paragraph 16, and therefore must deny the same.

23
24 17. Paragraph 17 contains conclusions of law, to which no response is required.
25 The State denies the remaining allegations in the paragraph.

26 18. Paragraph 18 contains conclusions of law, to which no response is required.
27 The State denies the remaining allegations in the paragraph.
28

1 19. Paragraph 19 contains conclusions of law, to which no answer is required.
2 The State denies the remaining allegations in the paragraph.

3 20. Admit.

4 21. Admit.

5 22. Admit.

6 23. The State admits that Wilbur Ross was the Secretary of Commerce. The
7 remaining allegations in Paragraph 19 contain conclusions of law, to which no response
8 is required.
9

10 24. Admit.

11 25. The allegations in the first and second paragraphs of Paragraph 25 contain
12 conclusions of law, to which no response is required. The State admins that the plaintiff
13 provided NMFS sixty days' notice of its intent to sue.
14

15 26. The allegations in Paragraph 26 contain conclusions of law, to which no
16 response is required.
17

18 27. Deny.

19 28. To the extent that Paragraph 28 quotes the Endangered Species Act, the
20 State admits that the quoted text is from the Endangered Species Act.
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22 29. To the extent that Paragraph 29 quotes the Endangered Species Act, the
23 State admits that the quoted text is from the Endangered Species Act.
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25 30. To the extent that Paragraph 30 quotes USFWS regulations, the State
26 admits that the quoted text is from USFWS regulations.
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1 31. To the extent that Paragraph 31 quotes the Endangered Species Act, the
2 State admits that the quoted text is from the Endangered Species Act.

3 32. To the extent that Paragraph 31 quotes the Endangered Species Act, the
4 State admits that the quoted text is from the Endangered Species Act. To the extent that
5 Paragraph 31 quotes NMFS regulations, the State admits that the quoted text is from
6 NMFS regulations. The State denies the legal conclusions contained in Paragraph 31.
7

8 33. To the extent that Paragraph 33 quotes the Endangered Species Act, the
9 State admits that the quoted text is from the Endangered Species Act. To the extent that
10 Paragraph 33 quotes NMFS regulations, the State admits that the quoted text is similar,
11 though not identical, to NMFS regulations. The State denies the remainder of the
12 Paragraph.
13

14 34. To the extent that Paragraph 34 quotes the Endangered Species Act, the
15 State admits that the quoted text is from the Endangered Species Act. To the extent that
16 Paragraph 34 purports to characterize a court decision, the decision speaks for itself and
17 no response is required.
18

19 35. To the extent that Paragraph 33 quotes ESAreulations, the State admits
20 that the quoted text is similar, though not identical, to ESA regulations.
21

22 36. To the extent that Paragraph 36 quotes ESA and NMFS regulations, the
23 State admits that the quoted text is from ESA and NMFS regulations.
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25 37. To the extent that Paragraph 37 quotes ESA and NMFS regulations, the
26 State admits that the quoted text is from ESA and NMFS regulations.
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1 38. To the extent that Paragraph 38 quotes NMFS regulations, the State admits
2 that the quoted text is from NMFS regulations.

3 39. To the extent that Paragraph 39 quotes NMFS regulations, the State admits
4 that the quoted text is from NMFS regulations.

5 40. To the extent that Paragraph 40 quotes ESA and NMFS regulations, the
6 State admits that the quoted text is from ESA and NMFS regulations. To the extent that
7 Paragraph 40 purports to characterize a court decision, the decision speaks for itself and
8 no response is required.

9 41. To the extent that Paragraph 41 quotes ESA and NMFS regulations, the
10 State admits that the quoted text is from ESA and NMFS regulations.

11 42. To the extent that Paragraph 42 purports to characterize a court decision,
12 the decision speaks for itself and no response is required. To the extent that Paragraph 42
13 quotes NMFS regulations, the State admits that the quoted text is from NMFS
14 regulations.

15 43. To the extent that Paragraph 43 quotes the National Environmental Policy
16 Act, the State admits that the quoted text is from NEPA.

17 44. To the extent that Paragraph 44 quotes the Council on Environmental
18 Quality regulations, the State admits that the quoted text is from CEQ regulations.

19 45. To the extent that Paragraph 45 quotes NEPA, the State admits that the
20 quoted text is from NEPA.

1 46. To the extent that Paragraph 46 quotes and characterizes NEPA, the State
2 admits that the quoted text is from NEPA. The text of NEPA is self-evident and no
3 response is required.
4

5 47. To the extent that Paragraph 47 characterizes CEQ regulations, text of
6 regulations is self-evident and no response is required.

7 48. To the extent that Paragraph 48 characterizes CEQ regulations, text of
8 regulations is self-evident and no response is required.
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10 49. To the extent that Paragraph 49 characterizes CEQ regulations, text of
11 regulations is self-evident and no response is required.

12 50. To the extent that Paragraph 50 quotes NEPA, the State admits that the
13 quoted text is from NEPA.
14

15 51. To the extent that Paragraph 51 quotes CEQ regulations, the State admits
16 that the quoted text is from CEQ regulations. To the extent that Paragraph 51 purports to
17 characterize court decisions, the decisions speak for themselves and no response is
18 required.
19

20 52. To the extent that Paragraph 52 quotes the Magnuson-Stevens Fishery
21 Conservation and Management Act (“MSA”), the State admits that the quoted text is
22 from the MSA.

23 53. To the extent that Paragraph 53 quotes the MSA and a Presidential
24 Proclamation, the State admits that the quoted text is from the MSA or a Presidential
25 Proclamation.
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1 54. To the extent that Paragraph 54 quotes the MSA and Department of
2 Commerce documents, the State admits that the quoted text is from the MSA or
3 Department of Commerce documents.
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5 55. To the extent that Paragraph 59 purports to reflect the MSA, the text of the
6 MSA is self-evident and no response is required

7 56. To the extent that Paragraph 56 purports to reflect the MSA, the text of the
8 MSA is self-evident and no response is required
9

10 57. To the extent that Paragraph 57 purports to reflect the MSA, the text of the
11 MSA is self-evident and no response is required

12 58. To the extent that Paragraph 58 purports to reflect the MSA, the text of the
13 MSA is self-evident and no response is required
14

15 59. To the extent that Paragraph 59 purports to interpret the MSA, the text of
16 the MSA is self-evident and no response is required

17 60. To the extent that Paragraph 60 purports to interpret the Administrative
18 Procedures Act (“APA”), the text of the APA is self-evident, and no response is required
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20 61. To the extent that Paragraph 61 quotes the APA, the State admits that the
21 quoted text is from the APA.

22 62. To the extent that Paragraph 62 purports to characterize a court decision,
23 the decision speaks for itself and no response is required.
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25 63. To the extent that Paragraph 63 quotes the APA, the State admits that the
26 quoted text is from the APA.
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1 64. The State admits that SRKWs are also known as orcas and are black and
2 white marine mammals. The remaining allegations in Paragraph 64 are too ambiguous for
3 the State to admit or deny.
4

5 65. The State admits the allegations in this paragraph.

6 66. Deny. The description of range and season migration is oversimplified and
7 incorrect. SRKW are highly mobile and can travel up to approximately 86 miles in a
8 single day. Movements vary both daily and seasonally. SRKW are believed to spend
9 roughly 50% of their time offshore annually; they spend the vast majority of their time
10 offshore from October through April but make forays into the inshore areas of Puget
11 Sound during this time frame though never exceeding 20% of the time.
12

13 67. The State admits that in 2008 NMFS issued a recovery plan for SRKW.
14 The remainder of the paragraph purports to characterize the recovery plan and the plan
15 speaks for itself.
16

17 68. The State admits that the SRKW population has declined in the past fifteen
18 years. The remainder of the paragraph contains vague allegations to which the State
19 cannot admit or deny, therefore the State must deny the same.
20

21 69. To the extent that Paragraph 69 characterizes the SEAK BiOp, the text of
22 the BiOp is self-evident and no response is required. The remainder of the paragraph
23 contains vague allegations to which the State cannot admit or deny, therefore the State
24 must deny the same.
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1 70. Admit that SRKW are considered a DPS of the subspecies of North Pacific
2 resident killer whales. Deny as to the whale's diet. SRKW diet is not entirely fish, they
3 have been documented to consume squid.
4

5 71. The State denies the allegations in Paragraph 71.

6 72. The State denies the allegations in Paragraph 72.

7 73. Paragraph 73 cites a population assessment, the text of which is self-evident
8 and no response is required.
9

10 74. The State admits the allegations in this paragraph.

11 75. The State admits that salmon are widely found in the northern Pacific
12 Ocean and Hokkaido Island, Japan.
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14 76. The State admits the allegations in this paragraph.

15 77. The State admits the allegations in this paragraph.

16 78. The State admits the allegations in this paragraph.

17 79. The State admits the allegations in this paragraph.

18 80. The allegations in Paragraph 80 are too vague and ambiguous to permit
19 proper response and the State denies them on that basis.
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21 81. To the extent that Paragraph 81 purports to reflect the MSA, the text of the
22 MSA is self-evident and no response is required.
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24 82. To the extent that Paragraph 82 purports to reflect the MSA and the FMP
25 for Southeast Alaska, the text of the MSA and the FMP is self-evident and no response is
26 required.
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1 83. Deny. The FMP defines two areas a “West Area” and an “East Area” which
2 are distinct from “Western Alaska” as referred to in this paragraph. Further, the NPFMC
3 excluded three historic net fishing areas from the FMP that occur in the EEZ, and the
4 commercial salmon fisheries that occur there, from the West Area: the Cook Inlet Area,
5 Prince William Sound Area, and the Alaska Peninsula Area.

7 84. Admit that NMFS retains oversight authority of Alaska’s management of
8 federal fisheries in Alaska. The NPFMC accepts the harvest levels set by the Pacific
9 Salmon Commission and the State of Alaska, as long as those levels are consistent with
10 the Council’s policy and the objectives of this plan. Further, it accepts the allocations of
11 harvests among the various groups of fishermen set by the Alaska Board of Fisheries, as
12 long as those allocations are consistent with the Council’s policy and objectives and the
13 national standards of the Magnuson-Stevens Act.

16 85. Deny. Chinook are the third most harvested species, after coho and chum
17 salmon. The winter troll fishery does not occur in the EEZ; only summer troll and sport
18 fisheries occur in the EEZ. The winter troll season is defined as October 11 through April
19 30 and is managed not to exceed a GHF of 45,000 non-Alaska hatchery produced
20 Chinook salmon. The regulatory period for coho salmon retention in the troll fishery is
21 June 15 through September 20. The regulatory period for coho salmon begins June 1.

23 86. Admit that salmon fisheries East of Cape Suckling in Alaska are subject to
24 the Pacific Salmon Treaty. The purpose of the Treaty is reflected in its text, which speaks
25 for itself and no response is required

27 87. The State admits the allegations in this paragraph.
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1 88. The State admits the allegations in this paragraph.

2 89. The State admits the allegations in this paragraph.

3 90. The State admits the allegations in this paragraph.

4 91. The allegations in the first sentence are too vague to give rise to a proper
5 response. The State denies the second sentence of Paragraph 91.

6 92. To the extent that Paragraph 92 characterizes the SEAK BiOp, the text of
7 the BiOp is self-evident and no response is required.

8 93. To the extent that Paragraph 93 characterizes the SEAK BiOp, the text of
9 the BiOp is self-evident and no response is required.

10 94. To the extent that Paragraph 94 characterizes the SEAK BiOp, the text of
11 the BiOp is self-evident and no response is required.

12 95. To the extent that Paragraph 95 characterizes the SEAK BiOp, the text of
13 the BiOp is self-evident and no response is required.

14 96. To the extent that Paragraph 96 characterizes the SEAK BiOp, the text of
15 the BiOp is self-evident and no response is required.

16 97. To the extent that Paragraph 97 characterizes the SEAK BiOp, the text of
17 the BiOp is self-evident and no response is required.

18 98. To the extent that Paragraph 98 characterizes the SEAK BiOp, the text of
19 the BiOp is self-evident and no response is required.

20 99. To the extent that Paragraph 99 characterizes the SEAK BiOp, the text of
21 the BiOp is self-evident and no response is required.

1 100. To the extent that Paragraph 100 characterizes the SEAK BiOp, the text of
2 the BiOp is self-evident and no response is required.

3 101. To the extent that Paragraph 101 characterizes the SEAK BiOp, the text of
4 the BiOp is self-evident and no response is required.

5 102. To the extent that Paragraph 102 characterizes the SEAK BiOp, the text of
6 the BiOp is self-evident and no response is required.

7 103. To the extent that Paragraph 103 characterizes the SEAK BiOp, the text of
8 the BiOp is self-evident and no response is required. To the extent that Paragraph 103
9 contains conclusions of law, no response is required. To the extent a response is required
10 the State denies the allegations in this paragraph.

11 104. Paragraph 104 contains conclusions of law, no response is required. To the
12 extent a response is required the State denies the allegations in this paragraph.

13 105. Paragraph 105 contains conclusions of law, no response is required. To the
14 extent a response is required the State denies the allegations in this paragraph.

15 106. Paragraph 106 contains conclusions of law, no response is required. To the
16 extent a response is required the State denies the allegations in this paragraph.

17 107. Paragraph 107 contains conclusions of law, no response is required. To the
18 extent a response is required the State denies the allegations in this paragraph.

19 108. Paragraph 108 contains conclusions of law, no response is required. To the
20 extent a response is required the State denies the allegations in this paragraph.

21 109. The first sentence is vague and no response is required. The State denies the
22 second and third sentences of Paragraph 109. To the extent that Paragraph 109
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1 characterizes the SEAK BiOp, the text of the BiOp is self-evident and no response is
2 required.

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4 110. Paragraph 110 contains conclusions of law, no response is required. To the
5 extent a response is required the State denies the allegations in this paragraph.

6 111. The first sentence of Paragraph 110 contains conclusions of law, no
7 response is required. To the extent a response is required the State denies the allegations
8 in this paragraph. To the extent that Paragraph 111 characterizes the SEAK BiOp, the text
9 of the BiOp is self-evident and no response is required.
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11 112. Paragraph 112 contains conclusions of law, no response is required.
12 To the extent a response is required the State denies the allegations in this paragraph.

13 113. To the extent that Paragraph 113 characterizes the SEAK BiOp, the text of
14 the BiOp is self-evident and no response is required.
15

16 114. The State denies the allegations in Paragraph 114.

17 115. Paragraph 115 contains conclusions of law, no response is required.
18 To the extent a response is required the State denies the allegations in this paragraph.
19

20 116. The State denies the allegations in Paragraph 116.

21 117. Paragraph 117 contains conclusions of law, no response is required. To the
22 extent a response is required the State denies the allegations in this paragraph.

23 118. The State denies the allegations in Paragraph 118.

24 119. Paragraph 119 contains conclusions of law, no response is required. To the
25 extent a response is required the State denies the allegations in this paragraph.
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AFFIRMATIVE DEFENSES

1. This Court may lack subject matter jurisdiction over some or all of Plaintiff's claims.
2. Plaintiff may lack standing.
3. The claim is barred by the statute of limitations.

Dated: March 9, 2021

NOSSAMAN LLP
LINDA R. LARSON

By: /s/ Linda R. Larson
Linda R. Larson

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2021, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

/s/ Linda R. Larson

Linda R. Larson